LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 6 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. 1388

AUTOMATIC ELECTRIC COMPANY,
Petitioner,

v.

TECHNOGRAPH PRINTED CIRCUITS, LTD., and TECHNOGRAPH PRINTED ELECTRONICS, INCORPORATED,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WALTER J. BLENKO
WALTER J. BLENKO, JR.
1319 Rockwell-Standard Bldg.
Pittsburgh, Pennsylvania 15222
Attorneys for Respondents

June 6, 1966

SMITH BROS. CO. INC., LAW PRINTERS, 620 SECOND AVENUE, PITTSBURGH, PA. 15219

TABLE OF AUTHORITIES

CASES

	PAGE
Croname, Incorporated v. Technograph Printed Circuits, Ltd., and Technograph Printed Electronics Incorporated, No. 1187, October Term, 1965	2
Forsyth v. Hammond (1897) 166 U.S. 506	5
Layne & Bowler Co. v. Western Well Works (1923) 261 U.S. 387	5
Magnum Co. v. Coty (1923) 262 U.S. 159, 163	5
Nickerson v. Pep Boys — Manny, Moe & Jack (D. Del., 1965) 247 F. Supp. 221	5
Technograph Printed Circuits, Ltd. v. Bendix Aviation Corp., (D.C. Md., 1963) 218 F. Supp. 1; aff'd. (C.A. 4, 1964) 327 F.2d 497; cert. den. 379 U.S. 826	2, 3, 4
Tyrrell v. District of Columbia (1917) 243 U.S. 1	5

STATUTES

35 U.S.C. 103	2

RULES

Federal Rules of Civil Procedure: Rule 56(c)	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. 1338

AUTOMATIC ELECTRIC COMPANY,
Petitioner,

v.

TECHNOGRAPH PRINTED CIRCUITS, LTD., and TECHNOGRAPH PRINTED ELECTRONICS, INCORPORATED,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The opinion of the Court of Appeals for the Seventh Circuit, of which review is sought (356 F.2d 442) is captioned in four cases.

References herein to the opinion below will be both to the official report and the Appendix to the Petition.

— II —

JURISDICTION

Respondents admit jurisdiction.

— III —

COUNTER-STATEMENT

This is an ordinary patent infringement case in the interlocutory stage. It is one of four companion cases involving one or more of the same three patents.*

A Petition for Writ of Certiorari filed in one of the companion cases and raising the same questions presented herein was denied on May 23, 1966; *Croname, Incorporated v. Technograph Printed Circuits, Ltd., and Technograph Printed Electronics, Incorporated,* No. 1187, October Term, 1965. The other companion cases have been remanded to the district court for further proceedings.

The patents in suit are addressed to complex electronic circuits and components and the manufacture thereof.

Petitioner moved for summary judgment in the district court on the grounds of anticipation and obvious-

---

*Respondents earlier filed an action on the three patents in the District of Maryland. That court held the patents invalid on various grounds and also held they had not been infringed; *Technograph Printed Circuits, Ltd. v. Bendix Aviation Corp.,* (1963) 218 F. Supp. 1. The Fourth Circuit affirmed on the sole ground of obviousness under 35 U.S.C. 103; 327 F.2d 497 (1964), cert. den. 379 U.S. 826 (1964) (356 F.2d 443; Pet., 4a).

ness (356 F.2d 445; Pet., 6a). Its motion was unsupported by affidavits or other showing of fact. Respondents opposed the motion on the ground that there were genuine issues of material fact which precluded the entry of summary judgment; Civil Rule 56(c); and they filed extensive affidavits factually supporting their position and showing that the decision in the *Bendix* case rests upon numerous errors of fact. The district court filed no opinion; it entered only a minute order granting summary judgment dismissing the complaint in each of the four cases (356 F.2d 446; Pet., 8a). Respondents appealed.

All of the defendants below (including Petitioner) conceded in the Court of Appeals that the *Bendix* decision is not *res judicata* here (356 F.2d 446; Pet., 9a). The record of the *Bendix* case is not a part of the record in this case.

Petitioner asserted in the Court of Appeals that respondents' affidavits raised no genuine issue of fact, but the Court of Appeals held (356 F.2d 447; Pet., 10a):

> "We find from the record before us on this appeal that there is a genuine issue of material fact present here essential to the determination of the issues presented by defendants' motions for summary judgment."

The Court of Appeals correctly distinguished between questions of fact and questions of law arising in the cases (356 F.2d 447; Pet., 11a).

— IV —

PETITIONER'S "QUESTIONS PRESENTED" DO NOT FAIRLY ARISE ON THIS RECORD:

Question 1 (Pet., 2) is directly contrary to the position taken by petitioner below. What petitioner is asking here is that respondents be held estopped by the judgment in the *Bendix* case from litigating their patents against petitioner. But in the proceedings below petitioner conceded that the *Bendix* decision is not *res judicata* here, and the Court of Appeals so noted (356 F.2d 446; Pet., 9a). Insofar as the effect of the *Bendix* decision as precedent is concerned, the Court of Appeals correctly noted the force and effect of the rule of comity applicable when this case reaches final hearing (356 F.2d 448; Pet., 11-12a).

Question 2 (Pet., 3) does not arise. The Court of Appeals properly held that there are genuine issues of material fact (356 F.2d 447; Pet., 10a). The petition nowhere shows otherwise.

— V —

ARGUMENT

Petitioner's Question 1 is a contrived question which not only does not arise but is directly contrary to petitioner's concession below. Petitioner cites *Nickerson v. Pep Boys — Manny, Moe & Jack* (D. Del., 1965) 247 F. Supp. 221. In that case, however, the plaintiff conceded that it had no new or different evidence to present. Being in a district court, the case presents no conflict of circuit with the instant proceeding. This Court has held that it will not grant certiorari in the circumstances presented here; *Tyrrell v. District of Columbia* (1917) 243 U.S. 1, 6.

Petitioner's Question 2 presents mere questions of fact. This Court has uniformly held that it will not grant certiorari to review such questions, particularly where, as here, they do not involve principles of public importance as distinguished from the mere interests of the parties: *Magnum Import Co. v. Coty* (1923) 262 U.S. 159, 163; *Layne & Bowler Co. v. Western Well Works* (1923) 261 U.S. 387, 393; *Forsyth v. Hammond* (1897) 166 U.S. 506, 514.

The petition should be denied.

Respectfully submitted,

WALTER J. BLENKO
WALTER J. BLENKO, JR.
1319 Rockwell-Standard Bldg.
Pittsburgh, Pennsylvania 15222
Attorneys for Respondents.